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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

NO. 389

H. L. CRAVENS AND BILL P. YEAGER,
Petitioners

vs

CITY OF AMARILLO,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE SEVENTH SUPREME JUDICIAL DISTRICT OF TEXAS AMARILLO, TEXAS

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Petitioners pray that a Writ of Certiorari issue to review the judgment of the Court of Civil Appeals for the Seventh Supreme Judicial District of Texas which became final on 25 June 1958.

OPINIONS BELOW

The opinion of the trial court is not reported but is in the accompanying record. The opinion of the Court of Civil Appeals for the Seventh Supreme Judicial District of Texas is reported in Vol. 309 SW 2d. p. 903. The action of the Supreme Court of Texas in dismissing the application for writ of error to that court, "WRIT DISMISSED FOR WANT OF JURIS-

DICTION", was without written opinion and the certificate of the clerk of that court of such action is printed in Appendix A hereto, infra, page 10. The action of the Supreme Court of Texas in overruling the motion for rehearing was without written opinion and the certificate of the action of such court is printed in Appendix A hereto, infra, page 10.

JUDISDICTION

The judgment of the Court of Civil Appeals for the Seventh Supreme Judicial District, entered 27 January 1958, (reported in Vol. 309 SW 2d, p. 903) became final on 25 June 1958, the date the Supreme Court of Texas overruled the Petitioners' motion for rehearing to that court. (Appendix A, page 10 hereof). The jurisdiction of this court is invoked under 28 U.S.C., Section 1257 (3), since Petitioners set up a claim as to their title, right, privilege or immunity to own, enjoy and dispose of their property under the Constitution of the United States. Petitioners present substantial claims of denial of due process in condemnation proceedings which were repeatedly raised in proper manner and have been rejected by the state courts. The state court's judgment is not supported upon adequate and independent non-federal ground. The jurisdiction of the court is invoked under 28 U.S.C., Section 1257 (3).

QUESTIONS PRESENTED

1. Whether Condemnees in a condemnation proceeding conducted in the state court are denied their property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, when the trial tribunal compels them to resort to the same theory of values as used by the Condemnor.

2. Whether Condemnees are denied due process in a condemnation proceeding conducted by a state court which deter-

mines the value of the land being taken solely on the basis of the theory of value as presented by Condemnor and in total rejection, for consideration, of a material theory of value as presented by Condemnees.

STATUTE INVOLVED

The Fourteenth Amendment to the Constitution of the United States pertaining to due process.

STATEMENT OF CASE

This is an action instituted by the *City of Amarillo, Texas*, Condemnor, for the purpose of condemning certain lands owned by Petitioners, Condemnees.

Even though the appearance of this petition seems to involve only questions of admissibility of evidence, this is not the underlying true criterion upon which this petition for Writ of Certiorari is based. The state trial court excluded evidence offered by Condemnees which could be controlling and which was material and pertinent to Petitioners' rights as landowners in the condemnation proceedings. The trial court excluded, in its entirety, the evidence presented by Condemnees as regards the value of their land being condemned and, in effect, compelled them to resort to the same basis of value as desired by Condemnor. Condemnees offered to present the "capitalization method of rental value", generally used by appraisers to establish the value of the lands being taken, according to their highest and best use. The Condemnor desired to rely upon the theory of "comparables" as a basis of value. The state courts refused to permit the introduction for consideration the basis of value as offered by Condemnees, but, in effect, compelled Condemnees to resort to the basis of "comparables" as relied upon by Condemnor. Such action on the part of the state courts denied Petitioners due process of law and was repugnant to the Fourteenth Amendment to the Constitution of the United States.

REASONS FOR GRANTING THE WRIT

The Fourteenth Amendment was violated in that the state deprived Petitioners of their property without due process of law. The state courts, in conducting the condemnation proceedings, would not accord Petitioners a "full and adequate hearing" to which the were entitled in establishing the highest market value of their property being taken for public purposes as determined from its adaptability to its highest and best use.

This Honorable Court in *McCandless V. United States of America*, 298 U.S. 341, 80 L. Ed. 1205 said,

> "The questions for our consideration are whether the ruling of the trial court refusing to admit certain evidence and offers of evidence was erroneous, and, if so, whether the rejection of such evidence may be disregarded *as not substantially prejudical under* Section 269 of the Judicial Code as amended, U.S.C.A. title 28, Section 391."

This Court further stated:

> "Petitioners offered further to prove that the surplus water could be captured and transported practicably and economically and used profitably for the cultivation of sugar cane; and that the cost of recovering the water and transporting it would be less per million gallons than that incurred for recovery and transportation of water to the cane lands on the Island of Oahu and other islands in this territory.
>
> These offers, and evidence of a similar character sought to be elicited from witnesses, were rejected by the trial court upon the ground that the possibility of bringing water from outside sources was too remote and speculative."

In the case now under consideration before this Court, Petitioners offered to establish in the state court that the lands being condemned could be practicably, economically and profitably used for subdivision or residential uses—*in spite of the city's witnesses testifying to the contrary*. Further, Petitioners offered to establish that the cost and other necessary features to be

considered in attempting to convert the property being condemned to residential or subdivision uses could be done on a reasonable, economical and profitable basis — *in spite of the city's witnesses to the contrary.*

This Honorable Court in the *McCandless* case, supra, further stated, and adopted cited authorities, viz:

> "The rule is well settled that, in condemnation cases; the most profitable use to which the land can probably be put in the reasonably near future may be shown and considered as bearing upon the market value; and the fact that such use can be made only in connection with other lands does not necessarily exclude it from consideration if the possibility of such connection is reasonably sufficient to affect market value."

This Honorable Court further said in the *McCandless* case, supra:

> "The Court below, while ruling that the rejection of the evidence was erroneous, *held that it was not prejudicial within the terms of Section 269 of the Judicial Code as amended.* The Court thought the offers of proof were not sufficiently specific to enable it to say that rejection, although erroneous, was prejudicial. Apparently what was meant by the offers not being sufficiently specific, as indicated by a statement earlier in the opinion, is that they did not show what would be the value of the land when reclaimed, nor the cost of developing and delivering a sufficient water supply. But that seems to be the exact basis of the government's contention that the offer was not complete, while affirming the court below, *we have just held is without merit.* We think equally it constitutes no ground for sustaining the ruling of the court as *non-prejudicial.* The action of the trial court in rejecting the offers plainly meant that it would be useless to offer further evidence supplementing and dependent upon that which had been rejected. Faced with that ruling and implication, counsel was not required to offer further evidence along that line."

This Honorable Court in the *McCandless* case, supra, reiterated the following principle:

"In an eminent domain proceeding, *the vital issue—and generally the only issue—is that of just compensation.* The proof here offered *necessarily related to the value of the land when used for a purpose to which it probably could be put within the rule laid down to the Olson case*, 292 U.S. 246, 78 L. Ed. 1236, supra, *to exclude from the consideration of the jury evidence of this elementary character could not be otherwise than prejudicial.*"

In the *McCandless* case, supra, this Court held that the rejection of the evidence offered was prejudicial to the landowner's rights and reversed the case.

This Court in *United States of America vs. Coronado Beach Co.*, 255 U.S. 172, 65 L. Ed. 737, in considering evidence material to a condemnation suit said:

"A subordinate objection is urged to the admissions of maps or drawings showing the adaptability of the island to a great system of improvements possible if the *Coronado Beach Company* owned the submerged land. *It is urged that such improvements were speculative, remote, and not shown to be commercially practicable.* But the drawings were admitted only to illustrate the opinion of the witness as to value and were explained as meaning no more. *If the reasons for his opinion were inadequate, they detracted from the weight of his testimony, but were not inadmissible on that account.*"

It is respectfully urged that all of the objections interposed by the *City* during the hearing conducted before the state court went only to the weight of the evidence offered and not to the admissibility.

In *United States v. Waterhouse*, 132 F. 2d 699, the Circuit Court for the Ninth Circuit in a case affirmed by this Honorable Court by Written Memorandum (88 L. Ed. 1047) held:

"In condemnation proceeding, capitalization of rental value of the land is evidence of market value of the land."

In the case at hand the evidence offered by Petitioners was to establish, on behalf of Petitioners, the market value of their

lands by capitalization of rental value. The state courts committed error in refusing to permit Petitioners to offer rental value as desired.

In the *Waterhouse* case, supra, the Court further said:

> "The 'market value' of land taken for public use must be determined in light of all shown facts in connection with those of general notoriety. Further, in condemnation proceeding, if evidence shows reasonable probability of adaptability of lands for uses specified, evidence regarding prospective uses is admissible, *and whether adaptability affects market value is for jury.* Further, in proceeding to condemn sugar cane lands adaptable for other uses, evidence regarding 'market value' based on buyer's recognition of uses and capitalization of income from land *was properly admitted.* Further, in proceedings to condemn sugar cane lands adaptable for other uses, *value of lands was for jury.*"

In *United States v. Ham*, 187 F. 2d 265, *The government was compelled by the trial court* to refrain from offering evidence in support of its basis upon which it desired to value the lands being condemned. *This is the identical position in which Petitioners find themselves in the State Courts.* Also, in *United States v. Ham*, supra, the government was compelled to resort to the same theory of basis of valuation as resorted to by the opposing party, even though it did not believe such basis was proper. *This is the identical situation in which Petitioners were placed in the State Courts.* In *United States v. Ham*, supra, the defendant landowners undertook to show net income by introduction of detailed schedule, whereas the government desired to resort to "comparables". In view of the court's ruling in the *Ham* case, the government was compelled to resort to the "net income approach" desired by the landowners and refused the right to use the "comparable" basis. *In the case at hand, the City desired to limit determination of the value of the lands being taken to "comparable sales", whereas, Petitioners desired to use the "capitalization" approach.*

In *United States v. Ham*, supra, the Court of Civil Appeals for the Eighth Circuit held that the action of the trial court in depriving the government of its right to use its theory of the case was erroneous. If such action on the part of the trial court would be prejudicial to the Condemnor of such a nature as to require reversal and remand, *then, surely, such erroneous action on the part of the State Courts as regards a landowner, who is insisting and relying upon his Constitutional rights, as accorded him, would be deprived of due process by such action and the valuation resulting would be so prejudicial as to be paramount to the taking of the owner's property without due process of law and should require a reversal and remand in order to protect the landowner's Constitutional rights under the due process clause in a condemnation proceeding. If, as in the United States v. Ham case, supra, the government was deprived of a fair, complete and adequate hearing, surely, on a like basis, a landowner would likewise be deprived of a full, complete and adequate hearing by a State court—particularly, in view of the Federal Constitutional right afforded the landowner, even in condemnation proceedings. Any other conclusion, would vitiate the individual right to own property, free from the taking by a sovereignty without just and fair compensation. Thus, this individual right to own property, which sprang from the Magna Charta and reiterated in our Federal Constitution could be nullified by State Courts unless protected by the due process clause of our Federal Constitution.*

Clearly, the questions presented are of importance in the preservation of property rights of the individual when confronted by condemnation proceedings instituted by a sovereignty, whether Federal or state, or any other agency possessing the power to condemn private property for public uses.

The principles involved turn on fundamental constitutional concepts regarding the individual right to own, use and enjoy

property and what constitutes a fair exercise of due process in conducting condemnation proceedings in a state court. The questions strike at the very roots of our constitutional concepts of the right of the individual to own property subject only to a taking by a taking authority by due process of law as accorded the individual by the constitutional guarantees contemplated by constitutional declarations.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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PROOF OF SERVICE

I, CLEO G. CLAYTON, JR., one of the attorneys for Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 19th day of September, 1958, I served copies of the foregoing Petition for Writ of Certiorari on Respondent by mailing copies thereof in duly addressed envelope, with adequate postage prepaid, duly deposited in the depository for the United States mails, to its attorneys of record as follows:

J. Edgar Haley
Gibson, Ochsner, Harlan, Kinney & Morris
Amarillo Building
Amarillo, Texas

CLEO G. CLAYTON, JR.

APPENDIX

CLERK'S CERTIFICATION

I, George H. Templin, Clerk of the Supreme Court of Texas, do hereby certify that in cause No. A-6787, styled *Cravens et al v. City of Amarillo* the action of the Supreme Court was as follows:

(a) On the 4th day of June, 1958, the Court *Dismissed for want of jurisdiction*, without notation, Petitioners' Application for Writ of Error;

(b) On the 25th day of June, 1958, the Court overruled Petitioners' Motion for Rehearing on the Application for Writ of Error filed.

IN TESTIMONY WHEREOF, witness my hand and the seal of the Supreme Court of Texas in the City of Austin, this 6th day of September, 1958.

(SEAL)

/s/ GEORGE H. TEMPLIN
George H. Templin, Clerk
Supreme Court of Texas